ment of the public schools under their general charge and superintendence, a school committee has power, not subject to revision, if exercised in good faith, to exclude a pupil from the public school for misconduct which injures its discipline and management, although such conduct is not mutinous or gross, and does not consist of a refusal to obey the teachers, or of any outrageous proceedings, but of acts of neglect, carelessness of posture in his seat and recitation, tricks of playfulness, and inattention to study and the regulations of the school in minor matters: *Hodgkins* v. *Rochport*, 105 Mass. 475. See also, *Fitzgerald* v. *Northcote*, 4 Fost. & Fin. 687. So, the school committee may, in that state, in order to maintain the purity and discipline of the public schools, exclude therefrom a child whom they deem to be of a licentious and immoral character, although such character is not manifested by any acts of licentiousness or immorality within the school: *Sherman* v. *Inhabitants of Charleston*, 8 Cush. 160. So, in that state, the school committee may lawfully exclude from school a pupil who refuses to comply with, and whose parents refuse to request that he be excused from complying with, a rule that during prayer in the morning exercises each pupil shall bow the head, unless his parents request that he be excused from doing so: *Spiller* v. *Inhabitants of Woburn*, 12 Allen 127. See also, *Donahoe* v. *Richards*, 38 Me. 376.

Rules requiring pupils in grammar to write English compositions, unless excused therefrom by request of their parents and requiring pupils to be prepared with a rhetorical exercise at the time appointed therefor, unless excused on account of sickness or other reasonable cause, under penalty of suspension or expulsion, have been held reasonable and proper: *Guernsey* v. *Pitkin*, 32 Vt. 224; *Sewell* v. *Board of Education*, 29 Ohio St. 89.

Although rules, like the one passed upon in the principal case, are believed to be common, the second point there in question does not appear ever before to have been adjudicated upon. The ruling of the court, however, seems so reasonable and so in accordance with principle, that there would seem to be no doubt of its correctness. The only remedy of the district in such a case is to bring an action at law. Doubtless, the board of directors might, by rule properly framed, impose the penalty of suspension or expulsion for any wilful injury of the property of the district; but payment of damages resulting from an innocent act cannot hereafter be thus enforced.

M. D. EWELL.

Chicago.

Supreme Court of Indiana.

CITY OF LOGANSPORT *v.* JUSTICE.

In an action against a city for the recovery of damages occasioned by an injury sustained by reason of a defective street or bridge thereof, it is sufficient proof of notice to the city of such defect to show that either the councilmen, a councilman or the street commissioner having charge of such street or bridge, knew of such defect a reasonable length of time previous to the time of the injury so as to have repaired such defect.

Before a party can complain that an instruction given to the jury is obscure in its terms, or if he is apprehensive that the jury misunderstood it, he must move for

such explicit qualification, or further instructions, as will obviate such an assumed objection.

Where one of a number of instructions given to the jury is erroneous, but it is clear upon all the instructions given that the jury were not misled, the giving of such erroneous instruction is not sufficient cause for the granting of a new trial.

Evidence of the amount and value of the plaintiff's practice as a physician, for five years previous to the time of receiving the injury, was admissible, not as the measure of damages to which he was entitled, but to aid the jury in estimating the amount to be awarded.

THIS was an action to recover damages for an alleged injury to the plaintiff, received in driving over a bridge across a certain ditch in the city, which, it was alleged, the city had negligently suffered to be and remain out of repair.

The complaint, having stated the plaintiff's profession to be that of a physician and surgeon, and the injury, alleged "that before and at that time, his professional services as a physician and surgeon were of the value of $500 per month, and he was realizing and earning that sum therefrom; and by reason of the injury to his body and his great pain aforesaid, he was wholly incapacitated and rendered unfit and unable to practice his profession, and compelled to remain within doors; and lost for that time his aforesaid practice and the emoluments thereof, for a period of eight months, to his damage of $4000," &c.

Issue, trial, verdict and judgment for the plaintiff for the sum of $1133.

M. Winfield, for appellant.

D. C. Justice, for appellee.

The opinion of the court was delivered by

WOODS, J.—The questions discussed by counsel for the appellant arise on the motion, made and overruled, for a new trial; and they will be considered in the order presented by counsel.

The court gave the following instruction upon the subject of notice to the city of the defective condition of the bridge, viz.:

"Notice to the councilmen or street commissioner, is notice to the city."

It is insisted that this instruction is wrong, in so much as it declares, that notice to the councilmen is notice to the city. The argument is, that councilmen, regarded as individuals and not as

a collective body or as a committee of the collective body, have no powers over, and are charged with no duties in respect to the streets of the city; and, therefore, that notice to them of a defect in a street, does not affect the city. The argument appears not to be destitute of foundation; and if the premise be conceded, the conclusion must probably follow. It may be observed, however, that the argument proceeds upon a phraseology somewhat different from that of the instruction. The latter says, "notice to the councilmen," which naturally, if not necessarily, means all of them; not some or any of them, as is assumed in the argument. It is not an apt mode of expression to say "the councilmen," if reference is intended to the members of the council in their individual capacities and relations; and embracing as it naturally does all the members, the phrase is not inapt, when a reference to the collective body is intended. Their coming or being altogether, except in connection with their official duties, would be an unusual and improbable occurrence; and a reference to them as "the councilmen," in the instruction, may well be said to have meant the official body of councilmen. Properly understood, therefore, the instruction was not erroneous, upon the theory of law advanced by the counsel; and if he was apprehensive of a mistaken understanding of it, he should have moved for such explicit qualification or further instruction as was deemed necessary.

But suppose the instruction be interpreted as meaning the councilmen as such, but not as assembled in council: Are they or are they not charged with any duty in reference to the streets of the city? Among the powers expressly conferred on the common council as a body is to "have exclusive power over the streets, highways, alleys and bridges within such city, * * * and to make repairs thereof:" Sect. 61, Act of March 14th 1867; 1 Davis Rev. 1876, p. 300. This power, as well as many others conferred in the same act, greatly concerns and affects the public welfare, as well as private rights; and to the end that public and private interests may not suffer from a failure to exercise, or from negligence in the exercise of, such powers, the law gives an injured party a remedy in damages against the city itself. To the same end it is provided in the law, that "the common council shall hold stated meetings at least twice in each month, and the mayor or any five councilmen may call special meetings:" Sect. 47, Act of March 14th 1867. The provision for calling special

meetings of the council was doubtless enacted in consideration of the fact demonstrated by experience that emergencies will arise, or may be reasonably expected to occur, requiring the early or immediate action of the council, and when to await the time for a regular meeting might entail disaster and loss, or, at least, the hazard of loss and liability on the city. The power to call the council together in special meetings may as well, and perhaps more frequently, be exercised in reference to the condition of the streets and bridges within the city, as any other subject of control by the council. The power to call such meetings, by necessary implication imposes the duty to make the call in proper cases.

It is true that five councilmen are required to concur in the call, but the duty rests on each who has notice of the emergency, for it is manifest that the refusal of any one of five who know of the necessity of a meeting, to join the other four in a call therefor, would not excuse the city from liability arising out of the failure to call such meeting. The duty growing out of the power to call special meetings in proper cases being, therefore, an individual duty imposed on each member of the council, it is incumbent on each, when informed of an emergency which requires the action of the common council, to notify the mayor, or other councilmen who may join in the necessary call, and if he negligently fails to perform this duty, the city is liable to any one who may suffer injury thereby.

We conclude, therefore, that notice to a councilman of a city of the dangerous condition of a street or bridge within the city limits is notice to the city. Our conclusion is fortified by a reference to the provisions of the law concerning the duties and powers of the street commissioner, as found in section 28 of the Act of May 14th 1867, already referred to, namely: "Sec. 28. It shall be the duty of the street commissioner, under the direction of the common council, to superintend the streets, alleys, market-places, landings; the construction, repairing, cleaning, and lighting the same, the building of sewers and drains, the purchase of the necessary implements of labor and the employment of laborers, and to perform all the other duties incident to his office: *Provided*, he shall have no power to contract for any debt or liability against the city, unless specially authorized so to do by an order, resolution or ordinance of the common council, made in accordance with the powers vested in such council by this act."

But if the powers of the street commissioner were more ample and free from restriction, it would still be true under the other provisions of the law to which we have adverted, that the councilmen have powers and a consequent duty in reference to the streets of the city, and, this conceded, nothing is wanting to support the conclusion already announced. The wisdom of the rule which makes notice to councilmen notice to the city is shown by consideration of the fact that councilmen are elected from the different wards of the city, and each is likely to observe, or at least soon to learn of, the dangerous condition of any of the streets or bridges in his ward or neighborhood, and by prompt action to secure the necessary repairs or protection against danger.

In the dissenting opinion it is affirmed to be the universal rule, "that the governing officers of a corporation, such as directors and trustees, must, in order to bind the corporation, act as a collective body, and in regular and lawful session," and that this rule applies with peculiar force to the officers of municipal corporations, "discharging duties for the benefit of the public, and not for the promotion of private interests."

This principle is doubtless true and applicable to all subjects concerning which the council must act, if at all, as a body, but it does not seem to us to apply to the subject of notice. Notice to the street commissioner, or to the mayor, is not notice to the council itself, but is notice to the city, on which the council must act, in order to save the city from liability; and the application of the rule contended for, would relieve the council from the responsibility of acting on such notice as well as upon notice to each individual member of the council. The street commissioner and mayor themselves can do nothing to repair a street or broken bridge, if it requires the incurring of any debt or liability against the city, and yet notice to them is sufficient. The mayor can discharge his duty, by calling the council together for the purpose of enabling it to take steps to have the street made good. But suppose the councilmen ignore the call of the mayor, and neglect to assemble in lawful session, the repairs are not made, and some one is injured? The city is held liable, but why? Not on account of any fault of the mayor or street commissioner; they have each done their whole duty, under the powers conferred on them. Not on account of any negligence of the common council, because that has not been in session, and could not act. But unless there has

been fault somewhere, and in somebody who represented the city, there can be no liability at all. It is clear that the only fault is in the individual councilmen, in failing to assemble, and for that fault the city is made responsible.

If the doctrine is enforced that the city is not liable for the conduct of councilmen, but only on account of the action of the council in lawful session, then notice to all the councilmen, though assembled together in the council hall, would not be good if given just before the commencement or just after the close of the session. Such a proposition does not command the assent of conscience and reason, and can hardly be accepted as the rule of law. For the purpose of receiving notice, the councilmen of a city, under our statute, are at all times the agents of the city, and within a reasonable time after receipt of notice, must move in the discharge of the duty so imposed upon them. It may be said that the presumption is that the council has furnished and put at the disposal of the ministerial officers the funds necessary to meet the expenses of emergencies, but presumptions of such a nature are by no means always true, and the rules of law must be applicable in all cases, and wherein the presumptions fail as well as where they hold good.

It may be enough to guard against danger, without making repairs, and the ministerial officers in most cases may be bound and able to provide the necessary safeguards, but cases are supposable when they cannot do so. The mayor and street commissioner may be absent from the city, or sick, or dead, or they may have resigned; and in such cases, unless notice to the councilmen be good, there could be no notice at all. In such cases the public interests imperatively require that the councilmen shall represent the city; and it being conceded that notice to the councilmen must be good in some cases, there can be no good reason for not holding it good in all cases.

Objection is made to the second instruction given upon request of the plaintiff, because it assumes the existence of a controverted fact, namely, that the bridge in question was within the city. The language of the instruction excepted to is as follows: "If the bridge in question, being within the city, was defective," &c. We do not regard the instruction as assuming the fact stated. The sentence is hypothetical not only in subject and predicate, but in its subordinate or qualifying clauses as well. See *Morgan* v.

Wattles, 69 Ind. 260. If this were doubtful, it is clear upon all the instructions given, the jury was not misled in this respect.

Further objection is made to this instruction because of the clause saying that, if "this (the condition of the bridge) had continued for several days or weeks, then the city will be presumed to have had notice such as will bind her in that regard."

In answer to an interrogatory, the jury found the fact to be, that the bridge had been in the condition it was in at the time the plaintiff was injured for "about two weeks;" and in answer to another interrogatory, it was found, that there had been negligence on the part of the city or of her street commissioner, at and before the accident, to keep the bridge in repair whenever discovered to be out of repair. Under any ordinary circumstances, and the evidence discloses nothing extraordinary, the fact of a bridge having been out of repair and in a dangerous condition, would warrant an inference of knowledge on the part of the officers of the city or some of them having duties in reference thereto, of the fact: see *Todd* v. *City of Troy*, 61 N. Y. 605. If, therefore, not strictly correct, it is manifest that the instruction did the appellant no harm; and under sections 101 and 580 of the Code, we are forbidden to reverse a case when it appears that the merits of the cause have been fairly tried in the court below. These considerations dispose too of the objection made to the first instruction, in reference to the time of the notice to the city. The rule no doubt is as claimed, that "the city is responsible only for reasonable diligence to repair the defect or prevent accidents, after the unsafe condition of the street is known:" Dillon on Mun. Corp., sect. 416; but from the answers to interrogatories, as well as upon the evidence, it is clear that the city had notice in due time to have made repair of the bridge in question.

It is also claimed, that the court erred in permitting the plaintiff to make proof concerning his professional earnings before his injury. Summing up on this topic, the counsel for the appellant says:

"In substance, the plaintiff is permitted to prove what his professional earnings had been per year for five years, and how much his business had fallen off during six months succeeding the injury. This was permitted to go to the jury under an allegation in the complaint, that the plaintiff was damaged in his business, and asking a recovery for the same. The damages are for a personal

injury. This evidence was admissible in estimating the value of time lost, but not as a basis of damages. Taken in connection with the demand of the complaint, and the instruction of the court, the evidence was clearly admitted as a basis of damages. It has been held, that similar evidence is competent, not as a basis of damages, but as a guide to the jury, to aid them in the exercise of their discretion."

The following are the authorities in support of this proposition: 6 Bing. (N. C.) 212; 11 Mich. 543; 43 N. H. 493; 5 R. I. 299; 20 How. 34; 23 Wend. 425; 33 N. J. (4 Vr.) 434; 11 Allen 73. In addition to these cases cited by counsel, see in point, *The City of Indianapolis* v. *Gaston*, 58 Ind. 224; *The Town of Elkhart* v. *Ritter*, 66 Id. 136.

We have no doubt the testimony was admissible, and indeed, the proposition of counsel for the appellant concedes as much. It did not furnish the measure of the damages to which the plaintiff was entitled, but the jury had a right to consider it in estimating the compensation to be awarded; and it is evident from the amount of the verdict, that this is the use they made of it. It is enough however, to meet the exception to its introduction, that the evidence was admissible for any purpose. If the court gave instructions authorizing a misuse of the evidence, exception should have been taken to the instruction. It has not been pointed out wherein the instructions were wrong in this direction.

We find no available error in the record. Judgment affirmed with costs.

ELLIOT, J., dissenting.

NOTICE.—A resolution of the common council to repair the defective street, is sufficient proof of notice: *Erd* v. *St. Paul*, 22 Minn. 443; so where another person had been injured by reason of the same defect in the street: *Chicago* v. *Powers*, 42 Ill. 169; or that notice to the chairman of the board of town supervisors had been given: *Jaquish* v. *Ithaca*, 36 Wis. 108. In Maine notice to some of the principal citizens is sufficient: *Mason* v. *Ellsworth*, 32 Me. 271; *Tuell* v. *Paris*, 23 Id. 556; *French* v. *Brunswick*, 21 Id. 29; but not so in Massachusetts: *Donaldson* v. *Boston*, 16 Gray 508; nor in Iowa: *Cramer* v. *Burlington*, 39 Iowa 512; nor in Connecticut: *Bill* v. *Norwich*, 39 Conn. 222. And it has been held that notice to two town trustees was not sufficient: *Bush* v. *Geneva*, 3 N. Y. S. C. 409; nor to an alderman: *Peach* v. *Utica*, 10 Hun 477. And where citizens of a city cast rubbish into a street contrary to a city ordinance, it was held that the city was not liable for an injury received by reason thereof, unless express notice thereof was received by its officers: *Griffin* v. *Mayor, &c.*, 9 N. Y. 456. This case is recognised as an au-

thority in a number of cases, but in *Hume* v. *Mayor, &c.*, 47 N Y. 639 (1872), the Court of Appeals declares that "A municipal corporation is not liable for injuries caused to individuals by obstructions on the highway not placed there by its own officials, or by authority of the city government, until after actual notice of their existence, *or until by reason of the lapse of time it should have had knowledge, and, therefore, actual notice may be presumed.*" *Dorlon* v. *Brooklyn*, 46 Barb. 604, follows the doctrines of *Griffin* v. *Mayor, &c.* And so in *Fahey* v. *Town of Harvard*, 62 Ill. 28, it was held, under like circumstances, that if the obstruction remained for some time notice would be implied. The *City of Ft. Wayne* v. *Dewitt*, 47 Ind. 391, has been cited to show that actual notice was necessary, but a close examination of the text of the case does not authorize such a deduction. As to actual notice, see *Rowell* v. *Williams*, 29 Iowa 210. So, where a city permitted a coal-vault to be constructed under a sidewalk, and a hole in the sidewalk for putting down coal was used which was covered with a movable grate, and while such grate was removed for three minutes, a child fell through it and was injured, it was held that the city was not liable, because it had no notice that such hole was uncovered, nor was it negligence, *per se*, to permit such vault to remain under the walk after actual notice thereof: *Lafayette* v. *Blood*, 40 Ind. 62.

And where a city is in fault in the construction of public works—a sewer—notice need not be proven: *Springfield* v. *LeClaire*, 49 Ill. 476; *Alexander* v. *Mt. Sterling*, 71 Id. 366; *Chicago* v. *Bropky*, 79 Id. 277; *Moore* v. *Minneapolis*, 19 Minn. 300; *Barton* v. *Syracuse*, 36 N. Y. 54.

"And a city whose officers know that the general condition of a walk is such that, from mere decay, such an accident is liable to happen upon it any moment, is chargeable with negligence if it neglects to repair, without bringing home to the authorities actual knowledge of the looseness of the particular plank which happened to occasion the injury:" *Weisenberg* v. *City of Appleton*, 26 Wis. 56; s. c., 7 Amer. R. 37.

In *Requa* v. *City of Rochester*, 85 N. Y. 129, it was said that notice to one of the members of the city council was insufficient as notice to the city, but could be used to establish the notoriety of the defect in the street. Notice to a citizen is not notice to the town: *Donaldson* v. *Boston*, 16 Gray 508; *contra*, *Springer* v. *Bowdoinham*, 7 Greenl. 442; *Mason* v. *Ellsworth*, 32 Me. 271; *quere*, *Rowell* v. *Williams*, 29 Iowa 210.

It was held that the following charge to the jury was properly given: "That in the absence of proof of express notice to the defendant of the defect which was the alleged cause of the injuries received by the plaintiff, the plaintiff cannot recover unless the jury finds that such defect was so open and palpable as to be apparent, and necessarily attract the attention of passers by:" *Dewey* v. *City of Detroit*, 15 Mich. 307. To the same effect are the cases of *Cleveland* v. *St. Paul*, 18 Minn. 279; *Hart* v. *Brooklyn*, 36 Barb. 226; *Doulon* v. *City of Clinton*, 33 Iowa 397; *City of Quincy* v. *Barker*, 81 Ill. 300; *City of Aurora* v. *Hillman*, 90 Id. 61; *Rapho* v. *Moore*, 68 Penn. St. 404; *Ward* v. *Jefferson*, 24 Wis. 342; *Johnson* v. *Haverhill*, 35 N. H. 74; *Reed* v. *Northfield*, 13 Pick. 94; *Howe* v. *Lowell*, 101 Mass. 99; *Manchester* v. *Hartford*, 30 Conn. 118; *Morrill* v. *Deering*, 3 N. H. 53; *Howe* v. *Plainfield*, 41 Id. 135; *Lobdell* v. *New Bedford*, 1 Mass. 153; *Goodnough* v. *Oshkosh*, 24 Wis. 549; *Rowell* v. *Williams*, 29 Iowa 210; *Canal Co.* v. *Graham*, 63 Penn. St. 290; *Decatur* v. *Fisher*, 53 Ill. 407; *Springfield* v. *Doyle*, 76 Id. 202; *Rockford* v. *Hildebrand*, 61 Id. 155; *Bartlett* v. *Kittery*, 68 Me. 358; *Lindholn* v. *St. Paul*. 19 Minn.

245; *Furnell* v. *St. Paul*, 20 Id. 117; *Colley* v. *Westbrook*, 57 Me. 181; s. c., 2 Amer. R. 30; *Hume* v. *Mayor of New York*, 74 N. Y. 264; *Atlanta* v. *Perdue*, 53 Ga. 607; *Market* v. *St. Louis*, 56 Mo. 189; *Chicago* v. *Crooker*, 2 Ill. App. 279; *Warren* v. *Wright*, 3 Id. 602; *Albrittin* v. *Huntsville*, 60 Ala. 486; *Erd* v. *St. Paul*, 22 Minn. 443; *Mack* v. *Salem*, 6 Oregon 275; *Jansen* v. *Atchison*, 16 Kan. 358; *Clark* v. *Corinth*, 41 Vt. 449; *Niven* v. *Rochester*, 76 N. Y. 619.

In 1866, after full argument in the House of Lords, Mr. Justice BLACKBURN declared the rule to be that, where the defendant had *the means of knowledge* and *negligently remained ignorant*, that *is equivalent* in creating a liability to *actual knowledge*: *Mersey Docks* v. *Gibbs*, 11 H. L. Cas. 687; s. c. Law Rep., 1 H. L. 93. See to same effect: *Rapho* v. *Moore*, 68 Penn. St. 404; s. c., 8 Amer. R. 202; *Weisenberg* v. *Appleton*, 26 Wis. 56; s. c. 7 Amer. R. 39; *Submarine Telegraph Co.* v. *Dickson*, 15 C. B. (N. S.) 759; *Powers* v. *The City of Council Bluffs*, 50 Iowa 197; *Rowell* v. *Willliams*, 29 Id. 210; *Boucher* v. *New Haven*, 40 Conn. 456.

It is necessary to allege in the pleadings that the city had notice of the defect in the highway: *Vandyke* v. *Cincinnati*, 1 Disney. 538; *The City of Ft. Wayne* v. *DeWitt*, 47 Ind. 391; *Noble* v. *Richmond*, 31 Gratt. 271; *contra*, *Serrot* v. *Omaha City*, 1 Dillon C. C. R. 312.

DAMAGES.—Where a pedler sued for damages occasioned by a personal injury, it was held competent for him to prove the nature and character of his business, the extent of his loss of time, also of the percentage on the goods sold by him in his usual course of business, the loss of interest of money received for the same in consequence of the injuries received, and the annual amount of sales made by him: *Hanover Railroad Co.* v. *Coyle*, 55 Penn. St. 396. The injured party is entitled to recover for the diminution of the receipts of his business, resulting from such inability to attend to it, or the injury caused him: *Kinney* v. *Crocker*, 18 Wis. 74; but where the profits of the injured party's business in the past are uncertain, proof thereof is incompetent: *Masterton* v. *Mt. Vernon*, 58 N. Y. 391; such proof is competent where his earnings can be shown with reasonable certainty: Id.; *McIntyre* v. *New York Central Railroad Co.*, 37 N. Y. 287; *Grant* v. *Brooklyn*, 41 Barb. 381.

So, in *Nebraska City* v. *Campbell*, 2 Black 590, proof that the plaintiff was a physician, and the extent of his practice was held competent; to the same effect is *Wade* v. *Leroy*, 20 How. 34. A similar ruling was held in the case of a lawyer plaintiff: *Walker* v. *The Erie Railroad Co.*, 63 Barb. 260; see also *Caldwell* v. *Murphy*, 1 Duer 233, affirmed in 1 Kern. 416; *Moore* v. *Cent. Railroad of Iowa*, 47 Iowa 688; *Nones* v. *Northouse*, 46 Vt. 587; *Howes* v. *Ashfield*, 99 Mass. 540. Such evidence is not competent as furnishing a measure of damages, but to guide the jury in the exercise of that discretion as to the amount of damages which, to a certain extent, is always vested in the jury in such cases: *New Jersey Express Co.* v. *Jonathan*, 33 N. J. Law 434; *Ingram* v. *Lawson*, 6 Bing. N. C. 212; *Allison* v. *Chandler*, 11 Mich. 543; *Taylor* v. *Dustin*, 43 N. H. 493; *Simmons* v. *Brown*, 5 R. I. 299; *Lincoln* v. *Saratoga & Schenectady Railroad Co.*, 23 Wend. 425; *Fulsome* v. *Concord*, 46 Verm. 135; *Tomlinson* v. *Derby*, 43 Conn. 562; *Bradshaw* v. *L. & Y. Railway Co.*, Law Rep., 10 C. P. 189; *Lombard* v. *Chicago*, 4 Biss. 460.

For loss of practice by a physician: *Metcalf* v. *Baker*, 57 N. Y. 662; *Welch* v. *Ware*, 32 Mich. 77; *City of Indianapolis* v. *Gaston*, 58 Ind. 224.

So it was held that evidence was admissible that the plaintiff's business was

dealing in land, and also the value of his business and the profits arising from it. The plaintiff can recover profits in such a case which might reasonably be anticipated, but if the business was uncertain and speculative, and not attended with any reasonable certainty of profits, then none can be recovered: *Penn. Railroad Co.* v. *Dale*, 76 Penn. St. 47. Such facts must be especially alleged: *Taylor* v. *Munroe*, 43 Conn. 36; *Tomlinson* v. *Derby*, 43 Id. 562; *contra: Wade* v. *Leroy*, 20 How. 34; *City of Chicago* v. *O'Brennan*, 65 Ill. 160. But where his business is of such a nature that the profits therein are uncertain, proof of his past profits is incompetent: *Masterton* v. *Mt. Vernon*, 58 N. Y. 391, disapproving the ruling in *Walker* v. *The Erie Railroad Co.*, *supra*.

So where the practice of a physician was carried on in an unlawful manner, evidence on behalf of the defendant is admissible to show that fact, the court saying: "As the plaintiff sought to recover damages on account of being disabled from practising his profession, his reputation, as to the lawfulness or unlawfulness of his practice, became a proper subject of inquiry, the value of that practice must have depended very largely upon that reputation. If his practice was unlawful, no matter how lucrative it might have been, the loss of it would lay no foundation for the recovery of damages. * * * The plaintiff's claim in effect, put his professional reputation in issue and made these questions proper: *Jacques* v. *Bridgeport Railroad Co.*, 41 Conn. 61; s. c. 19 Amer. R. 483. It was said in *Baltimore & Ohio Railroad Co.* v. *Boteler*, 38 Md. 568, "but evidence that he was a man of intemperate habits, and when intoxicated, was unable to transact business could not tend to elucidate that question [viz.: the amount of compensation to which he was entitled], and was not admissible for that purpose."

Where the evidence showed that the physician had a large and lucrative practice—in one instance receiving a 5000*l.* fee—evidence was admitted to show the yearly amount of the same; the jury having awarded 7000*l.* damages, a new trial was granted because the damages were inadequate: *Phillips* v. *South-western Railway Co.*, 4 Q. Div. 406; s. c. 20 Alb. L. J. 209; s. c. 9 Cent. L. J. 125. A verdict on the second trial was obtained for 16,000*l.*: 10 Cent. L. J. 284, affirmed in Exchequer Chamber: 5 Q. B. Div. 78; s. c. 20 Alb. L. J. 332; 9 Cent. L. J. 365. In *Holyoke* v. *Grand Trunk Railroad Co.*, 48 N. H. 541, the court uses the following language: "Plaintiff will not be entitled to special damages on account of any particular calling or profession. The injury is personal to the man. The description in plaintiff's writ designating him as a timber merchant, was merely *descriptio personæ*, inserted there for identification and nothing more. We do not understand that plaintiff's declaration in his writ contained any averment under which he could claim damages in consequence of his trade; or that the law would allow his damages to be enhanced on any such account. Such averment, if made, would simply be immaterial and of no advantage to the plaintiff." This ruling is supported by *Ballou* v. *Farnum*, 11 Allen 73, which is cited by the court. *Contra; Baldwin* v. *Western Railway Corporation*, 4 Gray 333.

W. W. THORNTON.